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## **MEMORANDUM**

**TO:** Fort Myers Beach Local Planning Agency  
**FROM:** Bill Spikowski  
**DATE:** January 7, 2002  
**SUBJECT:** **SHORT-TERM RENTALS** – January 15, 2002, Workshop

This memorandum provides backup material for your January 15<sup>th</sup> workshop on short-term rentals; this workshop is a continuation of your discussion from October 16, 2001 (my memorandum of October 10 with related material is attached.) You will receive backup material for your January 22<sup>nd</sup> workshop on nonconforming buildings and nonconforming uses with a separate memo.

### **PLANNING BACKGROUND**

When the town formed five years ago, there was a philosophical gap that seemed unlikely to be bridged. Residents who were appalled by any further growth on Estero Island were pitted against others who felt that the tourist economy must be allowed to evolve in order to survive.

The town's new comprehensive plan identified a third path, one that accepted the tourist economy and encouraged it to flourish but mandated that new development and redevelopment take place in a form that makes Fort Myers Beach a better place to live for everyone, not just more appealing to tourists. The obvious examples have been the redevelopment of Times Square and the upcoming creation of a "Main Street" along Old San Carlos Boulevard.

A consensus was able to be reached on this concept at least in part because many (if not most) local businesspeople are also local residents, rather than being outsiders whose interest in local affairs is primarily how to extract as much as possible from the community.

Another important factor in obtaining consensus for this plan was a recognition that it was just as important to ensure that the town's *residential areas* continue to flourish. Commercialization of these neighborhoods would destroy their attractiveness as great places to live.

Although the tourist economy is heavily intertwined with some residential areas, it has been kept a short (but important) distance from other residential areas, where permanent residents live amicably with returning visitors and with others who may stay only a month or two but who prefer a residential experience rather than an active resort-like environment.

Through the comprehensive plan and now the new land development code, we are turning these concepts into reality.

## **SHORT-TERM RENTAL ISSUES**

One very difficult issue that we discussed in September and October is short-term rentals (tentatively defined as rentals for periods of less than one month).

In some neighborhoods, especially those with lower-quality housing, short-term rentals can actually improve the residential experience. Monthly and longer rentals in these neighborhoods are typically occupied by service workers who are themselves fairly transient, who tend to overcrowd their units, keep late hours to match their work schedules (and age group), and who often don't give their dwelling the same respect that long-term tenants might. In these neighborhoods, an influx of more affluent vacationers may actually take better care of the units and have more respect for the neighborhood's tranquility even though they are staying for a shorter period.

However, in many neighborhoods with better housing, the service workers typically cannot afford the rents. Tenants here tend to be vacationers with more means, often retirees or families who can stay for extended periods. Even if they aren't permanent residents, these tenants are quite compatible with stable residential neighborhoods.

Short-term rentals can destabilize these neighborhoods. The transiency is itself a destabilizing factor – tenants don't stay long enough to become familiar with local regulations or with community standards. Usually there is no on-site management, and very often the property owners aren't even local residents. It can be very difficult for neighbors to know who to call when problems arise; a call to the sheriff may, at best, result in a warning for people to quiet down, but is otherwise ineffective. With new guests each week, the cycle gets repeated.

Also, these homes are much larger than hotel rooms and thus even more expensive to rent. It comes as no surprise that visitors choosing these accommodations often double and triple up to take advantage of the space (while reducing the cost to each party). This is not legal, but occupancy limits are very difficult enough to enforce, and nearly impossible when occupancy periods are short. Besides being illegal, a large number of guests sharing a single unit can create a continual party atmosphere that is incompatible with a quiet neighborhood.

There can also be peripheral problems such as cars parked in front yards and overflowing trash that isn't picked up until many days after the next week's tenants have arrived. A proposed new regulation that makes rental agents responsible for this type of code violation should aid in resolving these problems. However, many absentee owners don't use a local rental agent and often have no one nearby who is responsible for policing these matters.

## REGULATORY BACKGROUND

The existing codes regulate the intensity of “places to stay” through three different regulatory concepts: density, length of occupancy, and number of occupants.

### DENSITY

Density is the standard measurement of *residential* intensity, expressed in dwelling units per acre. In the Fort Myers Beach Comprehensive Plan, the lowest density is 4 units per acre, which is the “Low Density” cap that is applied to most neighborhoods that have been zoned for single-family use only. A larger part of Fort Myers Beach is limited to 6 units per acre, including most of the beachfront and the older neighborhoods that have been zoned for duplex and multifamily use.

Hotel and motel rooms have for many years been able to develop at a “multiple” of the allowable residential density. Multipliers of two and three have been common. (In some cases there has been no multiplier or effective limit on hotel intensity, allowing buildings as large as the Diamondhead and Lani Kai resorts.)

### LENGTH OF OCCUPANCY

Another method for regulating the intensity of “places to stay” has to do with the length of occupancy. Daily rentals are allowed in hotels and motels, provided that their zoning district specifically allows hotels and motels (typically commercial districts, and some multifamily districts).

Individual dwelling units are rarely rented for periods of less than a month in most parts of Lee County, but at the beaches this practice is increasing. Weekly rentals aren’t specifically allowed in any residential neighborhoods, but the definition of “family” suggests that weekly rentals may be permissible under the current land development code:

*Dwelling unit* means a room or rooms connected together, which could constitute a separate, independent housekeeping establishment for a family, for owner occupancy, or for rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing sleeping and sanitary facilities and one kitchen. The term “dwelling unit” shall not include rooms in hotels, motels or institutional facilities.

### NUMBER OF OCCUPANTS

If this definition is interpreted as a regulation and thus that weekly rentals are permissible anywhere, another definition would be equally binding and work against common practices in renting homes and condos:

*Family* means one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage or adoption shall not be deemed to constitute a family. The term “family” shall not be construed to mean a fraternity, sorority, club, monastery, convent or institutional group.

Under this definition, the only way that five adults could share a home would be that ALL are interrelated by blood, marriage, or adoption. In other words, two married couples not otherwise related would be considered a family because there were no more than four persons occupying

the dwelling; but two married couples and one adult child would not be considered a family because their number exceeds four and they are not all interrelated.

## POTENTIAL REGULATORY APPROACHES FOR SHORT-TERM RENTALS

The following paragraphs describe some regulatory approaches that the town might pursue regarding short-term rentals. These approaches could be used individually or combined with others.

### 1. DISTINGUISHING BETWEEN CONDOS AND SUBDIVISIONS

Condominiums have their own associations which that can allow or restrict short-term rentals. Therefore it seems that the town's regulatory powers can be limited mainly to individual structures on subdivided lots, because in these situations any one owner can easily affect adjoining owners who then have no other recourse.

Probably the easiest way to implement this concept would be to have any restrictions on weekly rentals apply only to subdivided lots (perhaps defined as lots that are 1/2 acre or smaller). Larger lots would simply not be included in the regulation. An alternative would be to take the zoning districts that allow multifamily buildings and break them into two separate districts. The advantage to this approach might be that the distinction on where weekly rentals are allowed would be visible on the official zoning maps, rather than requiring knowledge of the size of individual lots.

(If restrictions on short-term rentals were to be applied only to single-family zoning districts, this distinction would not be needed.)

### 2. DEFINING GEOGRAPHIC AREAS THAT EXCLUDE SHORT-TERM RENTALS

2-A Specific geographic areas could exclude short-term rentals. For instance, the town could identify just the neighborhoods in the "Quiet Center" and the "South Point," based on the following map that was used in the comprehensive plan to identify the character of distinct communities:

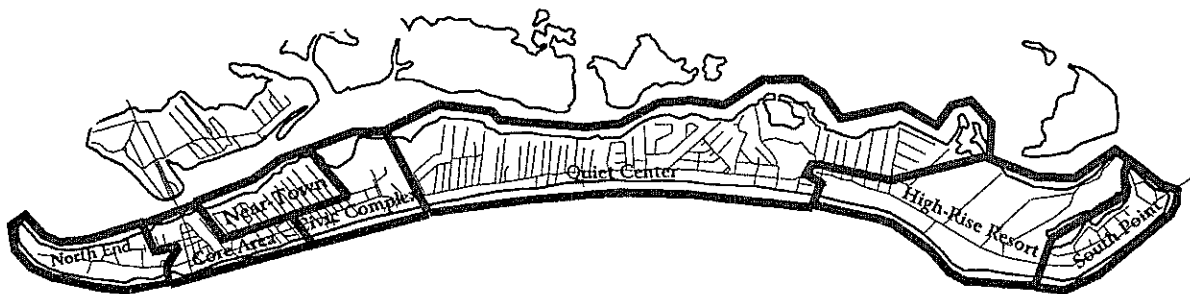


Figure 1, showing "Quiet Center" and "South Point" as indicated

Page 4-38 of the comprehensive plan contains the following general goals for these neighborhoods:

*"The QUIET CENTER of Estero Island remains peacefully between the bustling portions of Estero Boulevard and the high-rises further down the beach. Some condominiums and smaller resorts co-exist with the predominately single-family neighborhoods. This portion of the island is designated to remain low-rise and residential except for a few existing towers and the big mid-island marina."*

*"Estero Island's SOUTH POINT faces the active boating along Big Carlos Pass and the popular state park on Black Island and Lovers' Key. Despite pressures of commercialization to serve park visitors, this area retains its strictly residential character and its mostly low-rise housing style."*

**2-B** Another approach would be to apply this exclusion to all neighborhoods defined as "Low Density" on the comprehensive plan's future land use map. These areas are shown in white on the map below (and shown in yellow on the original of this map which is included in the comprehensive plan). Note that, with a few exception, these areas comprise a major part of the "Quiet Center" and "South Point" on the previous map; the main differences are that the "Low Density" areas exclude all existing multifamily developments and the subdivisions with duplex zoning. This approach would clearly implement Policy 4-B-3 of the comprehensive plan,<sup>1</sup> and would affect about 410 acres (26.5% of land within the town).

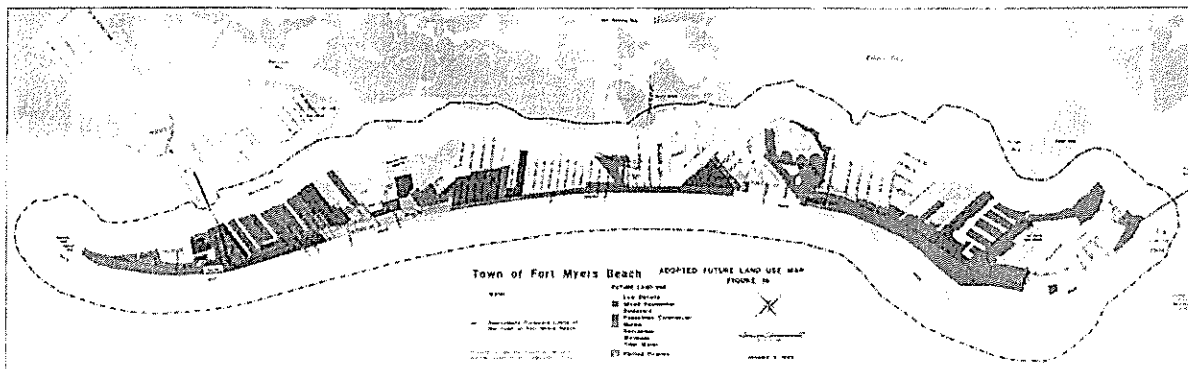


Figure 2, with "Low Density" areas shown in white

**2-C** A third approach would be to create an overlay zone that applies to certain neighborhoods but not others, based on the knowledge of LPA members of individual areas and public response to circulation of a preliminary map.

<sup>1</sup> **POLICY 4-B-3: "LOW DENSITY":** designed for existing subdivisions with an established low-density character (primarily single-family homes). For new development, the maximum density is 4 dwelling units per acre, and commercial activities are limited to home occupations as described in the Land Development Code (limited to incidental uses by the dwelling unit's occupant that do not attract customers or generate additional traffic).

### **3. AMORTIZATION PERIOD**

As we discussed last October, if short-term rentals are formally excluded, the town could establish an amortization procedure to phase out any existing rentals, rather than banning them immediately.

The most simple amortization approach would be to select a specific period, perhaps 2 years, during which existing short-term rentals would have to be phased out. If property owners were cited for short-term rentals during that period, they could be required to demonstrate that weekly rentals were an established use on the property on the date the new rules were first proposed (or on some other fixed date).

Another system would be to require any existing short-term rentals that are in neighborhoods where they would no longer be allowed to be registered with the town immediately after adoption of the ordinance, for instance within 90 days. As part of that registration, a property owner would provide evidence of prior legal operation including leases, receipts for payments of taxes, and similar data. If desired, the town could also require submission of financial data that could be used to set a different amortization period if, by objective standards, it would take longer than 2 years to amortize the existing use without creating an undue burden on the property owner. (With this approach, a maximum period of 4 or 5 years would still apply.)

By allowing a reasonable amortization time period, the new regulations could avoid being punitive against landlords who wish to stay in the weekly rental business. In fact, these owners would be in an advantageous position during the amortization period because no other short-term rentals could be introduced into those neighborhoods. However, during the course of the amortization period these owners would essentially be forced to sell those properties and acquire others in neighborhoods where short-term rentals would continue to be allowed. An amortization period that was too short could also affect the real estate market by putting too many properties on the market in a very short period.

### **4. RENTAL REGISTRIES**

In October we discussed the pros and cons of establishing a registry of rental properties. I discouraged the town from trying to establish a registry, at least at this time (see attached memo). However, many communities have established registries and this remains a possible approach; for our present purposes it could be limited only to properties that are rented for periods less than one month.

A registry would be most useful for regulating safety issues and for addressing some of the more common technical problems that result from short-term rentals. For instance, to become registered a property might be required to provide additional parking spaces, or to demonstrate that a special trash pickup has been arranged for the day of departure of weekly guests. A registry should not be used to perpetuate nonconforming short-term rentals, except possibly for a limited amortization period as described above.

The borough of Beach Haven in New Jersey has evolved a registry that deals primarily with safety, such as requiring inspections of smoke detectors, operable windows, and effective locks. Properties are inspected every three years; owners must be present for inspections or provide

keys to the inspectors. If three complaints are received on any property, they are issued a summons, and if found guilty three times in one year, a \$5,000 bond must be posted. If the problems persist, the bond is forfeited and the rental license revoked.

The Beach Haven system limits occupancy of *all* rental units to 50 square feet of bedroom space for each occupant. (Under this rule, a house with three 10' by 15' bedrooms would be limited to nine occupants; with only two 10' by 10' bedrooms, four occupants would be permitted.)

All rental units with tenants staying for less than one year are subject to registration requirements. All registration forms are public records.

Beach Haven also categorically bans any rental unit with living space below base flood elevation, (apparently even if the building was constructed in accordance with earlier regulations that allowed living space at ground level).

## **RECOMMENDED APPROACH**

At the January 15<sup>th</sup> workshop, LPA members need to discuss their views on this difficult issue and suggest a preferred approach that can be refined and then included in the proposed land development code. By taking this step now, there will be ample time for this approach to be critiqued by the public and modified as necessary well before formal public hearings to actually adopt this part of the new code.

It may be easier for LPA members to respond to a specific proposal rather than to debate general concepts. If so, please consider the following recommendation:

- Allow weekly rentals of dwelling units in all zoning districts except for the single-family districts (which are shown as "Low Density" in Figure 2).
  - If the LPA decides that some single-family neighborhoods have established patterns of short-term rentals, those neighborhoods could be assigned a different zoning category and thus excluded from this restriction
  - If there are other existing neighborhoods that are now zoned for duplexes but have been developed primarily with single-family homes, they could be added to the neighborhoods that exclude short-term rentals.
- Establish an amortization procedure to phase out in an orderly fashion any existing short-term rentals in single-family zoning districts.